IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

WP(C).No. 16922 of 2006(M)

PETITIONER:

C.C.SEBASTIAN, S/O.CHERIAN,
CHERUVALATH HOUSE, KIZHARIYUR P.O.,PAYOLI,
VADAKARA TALUK.

BY ADV. SRI.C.C.ABRAHAM

RESPONDENTS:

---

1. MALABAR CHITS FUNDS (P) LTD.,
KOZHIKODE BY MANAGING DIRECTOR,
PAIKKATT SATHAT, S/O.MAMMEDKOYA HAJI,
PAIKKATT HOUSE, ELATHUR AMSOM, DESOM,
KOZHIKODE TALUK.

2. STATE OF KERALA, REPRESENTED BY
GOVT.PLEADER, HIGH COURT OF KERALA.

BY GOVERNMENT PLEADER SRI. V.T.K.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)16922/06

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF ORDER PASSED IN I.A.111/06 IN A.S.18/06 ON THE FILE OF DISTRICT COURT.

EXT.P2: AFFIDAVIT AND PETITIN FILED BY PETTIIONER AND HIS BROTHER.

EXT.P3: TRUE COPY OF TITLE DEED 1539/93 OF MEPPAYYUR SRO.

EXT.P4: THE POSSESSION CERTIFICATE ISSUED BY CONCERNED VILLAGE OFFCER.

EXT.P4(A): TRUE COPY OF TAX RECEIPT ISSUED BY CONCERNED VILLAGE OFFICER.

EXT.P5: TRUE COPY OF ENCUBRANCE CERTIFICATE ISSUED BY SRO PAYOLI.

EXT.P6: TRUE COPY OF ORDER DATE 14/03/06 IN I.A.1311/06 IN O.S.438/02.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.16922 OF 2006

DATED THIS THE 18th DAY OF DECEMBER, 2006

JUDGMENT

Petitioner is the first appellant in A.S. 18/06 on the file of District Court, Kozhikode. Appeal was filed challenging the decree in O.S.438/02 on the file of Sub Court, Kozhikode. Defendants are the appellants. As per order in I.A.111/06, District Judge granted an order of execution of the decree on furnishing sufficient security to the satisfaction of the trial Court. Petitioner furnished security and filed I.A.1311/06 before Sub Court, Kozhikode. Under Ext.P6 order, the petition was dismissed holding that the security is not sufficient. This petition is filed under Article 227 of Constitution of India challenging that order. Though notice was sent to first respondent plaintiff and a notice was also served on the counsel appearing for first respondent before the trial Court, first respondent did not appear.

2. Learned Counsel appearing for petitioner was heard.

3. District Judge granted an order of stay on condition that appellants shall furnish security before the trial Court. Under Ext.P6 order, learned Sub Judge dismissed the application holding that security furnished was not proper and it was not furnished within time.

The order does not show why the security is not proper. It also does not show that the security furnished was not sufficient. In such circumstances, Ext.P6 order is quashed.

Learned Sub Judge is directed to pass appropriate order in I.A.1311/06. The application is not to be dismissed on the ground that the security was not furnished within the period. Sub Judge is directed to consider whether security furnished is sufficient or not. If not sufficient, reasons must also be shown.

M.SASIDHARAN NAMBIAR,JUDGE

Acd